IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr. Appeal No. 45 of 2001

Decided on 03.12.2007

State of H P .....Appellant

Versus

Kishori Lal and others ....Respondents

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?[1] *No*

For the appellant **Mr.V.K.Verma, Additional Advocate General.**

For the Respondent **Mr R.K.Gautam, Senior Advocate, with Mr. Naveen Bhardwaj Advocate.**

Surinder Singh, J.(oral)

Respondents were tried for offences, punishable under sections 323, 325, 149 and 506 of the Indian Penal Code. They were acquitted, against which the present appeal has been filed by the appellant-State.

Heard and gone through the record.

In brief the prosecution case has been that on 2.2.1996 at about 6 p.m. the complainant was way laid near his house at village ***Lahat*** by the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?. yes***

respondents on the ground that he had appeared as a witness against them. On hearing noise, Smt.Chatanki Devi, wife of the complainant reached the spot, she was also given beatings with fist blows and stone. Ashwani Kumar and Suran Chand came there and rescued the complainant and his wife from the clutches of the respondents. Smt. Chatanki Devi sustained fracture of her ribs besides other simple injuries. Sumail Chand had also sustained simple injuries. Both of them were threatened with dire consequences.

Complainant Sumail Chand lodged the FIR Ex.PW-1/A on 3.2.1996. Police set into motion, visited the spot, prepared the site plan Ex.PW-7/A and taken into possession stones Ex.P1 to Ex.P3 vide recovery memo Ex.PW1/B. Sumail Chand complainant was medically examined, his MLC is Ex.PW5/C. Smt.Chatanki Devi was also medically examined, her MLCs are Ex.PW4/A and Ex.PW5/D. She was also subjected to x-ray of her chest and in the opinion of the Doctor she had sustained fracture of 7^{th} to 9^{th} ribs of the left side of chest. Police recorded the statements of the witnesses. After completion of the challan, it was presented in the

court for trial under the aforesaid sections. Respondents pleaded not guilty and claimed trial.

The prosecution examined its witnesses but finally on appreciation of the evidence and upon hearing arguments of the learned counsel for the parties, respondents were acquitted.

It is pertinent to note that the Doctor Dinesh Sood (PW5) had x-rayed the chest of PW Chatanki Devi and gave his opinion Ex.PW5/A. In the cross-examination, the witness has admitted that these injuries are possible by fall but it could be properly opined by the Doctor, who had initially examined her. The Doctor, who had originally examined Smt.Chatanki Devi on 3.2.1996 was not examined by the prosecution and her M.L.C. dated 3.2.1996 was sought to be proved by Doctor Dinesh Sood (PW5), who did not issue the same, for the best reason known to the prosecution. Therefore, in this view of the matter, the fracture of ribs by giving beatings by the respondents and consequently offence under section 325 IPC against the respondents stands not proved.

As far as involvement of respondent Kishori Lal is concerned, it is also doubtful as his name does not find mention in the FIR, which is

the earliest version of the complainant Sumail Chand. Since the parties were locked in the litigation, as borne out from the record, therefore, story put forth by the prosecution qua his involvement appears to be exaggerated, therefore, case as alleged against him is not free from any doubt. Therefore, he is entitled for the benefit of doubt.

Sandeep Kumar, who was named in the FIR, was tried by the Juvenile Court and stood acquitted.

As far as Rameek Chand, Kushal Kumar, Sukh Ram, Tara Devi and Gayatri Devi are concerned, they have been named in the FIR and according to Sumail Chand (complainant) he was given kick and fist blows by each of the aforesaid accused person, which fact has been corroborated by Smt. Chatanki Devi and Ashwani Kumar (PW6) but said statement lacks evidence of the ingredients of offences under sections 147,149 and 506 IPC but case of voluntary causing simple hurt by the above five persons in furtherance of common intention stands proved. To this extent the impugned judgment is perverse. Therefore, it is partly set aside. Accordingly, Rameek Chand, Kushal Kumar, Sukh Ram, Tara Devi and

Gayatri Devi are convicted under section 323 read with section 34 of the Indian Penal Code. Keeping in view the peculiar facts and circumstances of the case and also the fact that the matter was pending before the trial court for four years and in appeal for more than seven years, therefore, ends of justice will met by giving them the benefit of section 3 of the Probation of Offenders Act. Accordingly, they are admonished. Appeal is partly allowed but it is dismissed against Kishori Lal respondent.

The matter is accordingly disposed of.

December 3,2007 (Surinder Singh),J.
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